

REMARKS

This application has been reviewed in light of the Office Action dated February 23, 2005. Claims 1, 4-7, 10, 13-15, 18 and 30-39 are presented for examination. Claims 1, 13, 15, 18, 30, 31 and 37 have been amended to define still more clearly what Applicants regard as their invention. The changes made are solely for the purpose of clarification of the claim language, and are neither intended nor believed to narrow the scope of any claim recitation. Claims 1 and 18 are in independent form. Favorable reconsideration is requested.

The specification has been amended to conform the Summary of Invention section to the amended claims.

Claims 1, 4, 5, 10, 18, 30, 31, 34, 38 and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,504,757 (Cook) in view of European Patent Application No. EP 0697778 (Keshav). Claims 6 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cook in view of Keshav, and further in view of U.S. Patent No. 4,884,266 (Pflaumer). Claims 7 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cook in view of Keshav, and further in view of U.S. Patent No. 5,010,553 (Sheller). Claims 13, 14, 35 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cook in view of Keshav, and further in view of U.S. Patent No. 6,167,046 (Terada). Claims 15 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cook in view of Keshav, and further in view of U.S. Patent No. 6,246,665 (Watanabe).

As shown above, Applicants have amended independent Claims 1 and 18 in terms that more clearly define what they regard as their invention. Applicants submit that these amended independent claims, together with the remaining claims dependent thereon, are

patentably distinct from the cited prior art for at least the following reasons.

Claim 1 is directed to a communication apparatus including: (a) a communication unit having different transfer rates and adapted to transmit a predetermined packet to all of a plurality of destination apparatuses using at least one of the different transfer rates; and (b) a control unit adapted to determine one of the different transfer rates as a maximum transfer rate between the communication apparatus and all of the plurality of destination apparatuses after responses to the predetermined packet are received from all of the plurality of destination apparatuses.

Thus, among other important features of an apparatus according to Claim 1, is that the apparatus has two or more different transfer rates, transmits a predetermined packet to all of a plurality of destination apparatuses using at least one of those transfer rates, and determines one of those transfer rates as a maximum transfer rate between the communication apparatus and all of the plurality of destination apparatuses after responses to the predetermined packet are received from all of the plurality of destination apparatuses.

Initially, as is conceded in the Office Action, Cook does not disclose that the apparatus receives responses to the predetermined packet from all of the destinations. Keshav relates to a network that includes one source apparatus and one destination apparatus (see, for example, col. 1, lines 12 and 13, referred to by the Examiner). Indeed, as conceded in the April 4, 2004 Office Action, “the total number of destination nodes [of Keshav] is one ...” (See April 4, 2004 Office Action, paragraph 8). Nothing has been found or pointed out in Keshav that relates to a system having a plurality of destination apparatuses, and therefore, Keshav certainly cannot teach or suggest determining a maximum transfer rate after responses to a transmitted

predetermined packet are received from all of the plurality of destination apparatuses.

Thus, even if Cook and Keshav are combined in the fashion proposed in the Office Action (and assuming for argument's sake that such combination would be permissible), the result of the combination would not meet the terms of Claim 1, which is therefore deemed to be clearly allowable over those two documents.

Independent Claim 18 is a method claim corresponding to apparatus Claim 1, and is believed to be allowable at least by virtue of the arguments presented above with regard to Claim 1.

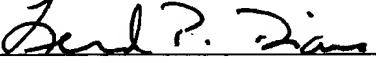
A review of the other art of record has failed to reveal anything which, in Applicants' opinion, would remedy the deficiencies of the art discussed above, as references against the independent claims herein. Those claims are therefore believed patentable over the art of record.

The other claims in this application depend from one or another of the independent claims discussed above and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, early and favorable continued examination of the present application is respectfully requested.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



Leonard P. Diana
Attorney for Applicants
Registration No. 29,296

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

NY_MAIN 500769v1